

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

PETITION OF THE EPISCOPAL DIOCESE OF RHODE ISLAND FOR DECLARATORY JUDGMENT ON TRANSMISSION SYSTEM COSTS AND RELATED “AFFECTED SYSTEM OPERATOR” STUDIES)
) **DOCKET NO. 4981**
)
)

Pursuant to Rule 1.19 of the Commission’s Rules of Practice and Procedure, the Division submits the following objections and responses to the Data Requests (First Set) of the Episcopal Diocese of Rhode Island:

GENERAL OBJECTION

The Division objects to all of the data requests contained in the First Set in that they are beyond the scope of the Supreme Court’s Order dated March 24, 2021 (see e.g., Sansone v. Morton Mach. Works, Inc., 957 A.2d 386, 398 (R.I.2008) (holding that an inferior tribunal may not exceed the scope of the remand or open up the proceeding to legal issues beyond the remand.)). That Order explicitly provides:

This matter is remanded for the Commission to comply with G.L. 1956 § 39-5-5, with directions to hold a hearing *to consider the new evidence* and to provide findings of fact and citations to the rules upon which the Commission may rest its conclusion.

(Emphasis added).

By the clause “to consider the new evidence,” the Supreme Court clearly is referencing the production made by the Division in response to the Petitioner’s APRA request after the Attorney General ruled that the materials should be produced. The Supreme Court also explicitly required the Commission “to provide findings of fact and citations to the rules upon which the Commission” relied rather than forwarding the Supreme Court a transcript of its open meeting decision. Nowhere in its Order did the Supreme Court authorize the Petitioner to conduct additional

discovery in the remand proceeding. The Petitioner does not possess any right to conduct discovery in the remand proceeding which is confined to the record that is currently before the Commission.

SPECIAL OBJECTIONS

1-1 Describe the discussion referenced in the first sentence of the email between Mathew Stern and Jon Hagopian dated November 12, 2019, including who participated, their place of employment, where it occurred, and what was discussed.

RESPONSE:

The Division objects to Data Request 1-1 on the ground that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. Without waiving the foregoing objection, on November 19, 2019, Jack Habib and Mathew Stern of the law firm of Keegan Werlin, LLP and attorney Brooke Scully of National Grid, all representing National Grid, came to the Division of Public Utilities and Carriers to meet with Division attorney Jon G. Hagopian to discuss this filing. The meeting was short, Mr. Habib informed attorney Hagopian of the position of the company with respect to the Petition. Attorney Habib stated that National Grid was opposing the petition. The discussion of the meeting centered around transmission upgrades and who bore responsibility for their costs. Attorney Hagopian was concerned that ratepayers would be held responsible for transmission upgrade costs rather than the parties who required the upgrades. The representatives of National Grid shared the same opinion. The parties also discussed reporting requirements of ISO New England relating to the Petition.

1-2 Please identify any other meetings or conversations that occurred between Matthew Stern, Jack Habib, Brooke Skulley or any other representative of Narragansett Electric Company d/b/a National Grid (the Company) and Jon Hagopian or any other representative of the Division of Public Utilities and Carriers (the Division) including who participated, their place of employment, where it occurred, and what was discussed.

RESPONSE:

The Division objects to Data Request 1-2 on the ground that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. Without waiving the foregoing objection, no other meeting or conversations took place other than at the hearing.

- 1-3 Explain the process by which the Division reached the conclusion reflected in the email of November 13, 2019, from John Hagopian to Matthew Stern and in the comments it filed in this docket 4981, including any research done, meetings or conversations had and any other diligence.**

RESPONSE:

The Division objects to Data Request 1-3 on the ground that it seeks information that is neither relevant to the Supreme Court’s remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-3 in that it seeks information protected by the deliberative process privilege. Without waiving the foregoing objections, the Division, with the advice of an outside consultant, formed its conclusion based upon a review and interpretation of the Petition, case law, and the applicable tariff and ISO New England rules.

- 1-4 Explain the similarities in the content of the Division’s comments filed in docket 4981 and the contents of Matthew Stern’s email dated November 12, 2019.**

RESPONSE:

The Division objects to Data Request 1-4 on the grounds that it is geared to unduly harass the Division and that it seeks information that is neither relevant to the Supreme Court’s remand nor is likely to lead to the discovery of admissible materials and/or information. Without waiving the foregoing objection, the documents speak for themselves.

- 1-5 Is it the Division’s standard practice to ask the Company for advice on how to present its legal position regarding a legal issue presented to the Public Utilities Commission (Commission)?**

RESPONSE:

The Division objects to Data Request 1-5 on the grounds that is geared to unduly harass the Division and that it seeks information that is neither relevant to the Supreme Court’s remand nor is likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-5 on the ground that it seeks a response based on the wholly erroneous assumption that the Division asked the advice of National Grid on “how to present its legal position” to the Commission. Without waiving the foregoing objections, as a matter of practice, as an independent party to Commission adjudications, the Division oftentimes makes inquiry of the Company to be able to formulate the Division’s own recommendation for submission to the Commission. In Docket No. 4981, the Division did not receive any advice on how to present its position to the PUC. It concluded that the Petition, if successful, would impose substantial costs on ratepayers to pay for transmission upgrades and studies—upgrades and studies that were caused by the

developer, not ratepayers. The Division found this view to be supported by the relevant legal authority.

1-6 Is it appropriate for a purportedly neutral regulatory agency to have its mental impressions shaped by one party to an adjudication in which it is meant to serve as the ratepayer advocate? If so, why?

RESPONSE:

The Division objects to Data Request 1-6 on the grounds that it is geared to unduly harass the Division and that it seeks information that is neither relevant to the Supreme Court's remand nor is likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-6 on the ground that it seeks a response based on the wholly erroneous assumption contained in the request that the Division's "mental impressions" were shaped by National Grid. Without waiving the foregoing objections, in Docket No. 4981, in no way were the Division's impressions shaped by National Grid. Rather, in the docket, the Division fulfilled its statutory mission to advocate for the ratepayers of Rhode Island when it opposed and successfully defeated a prayer in the Petition that would have potentially made ratepayers responsible for millions of dollars in transmission upgrades and study costs—costs that the Petitioner was responsible for according to accepted principles of cost causation. Furthermore, the relevant legal authority supports the Division's position in the matter.

1-7 On what basis did the Division conclude that its communications with its regulated for profit utility could be considered attorney work product?

RESPONSE:

The Division objects to Data Request 1-7 on the grounds that it is geared to unduly harass the Division and that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. Without waiving the foregoing objections, the Division concluded that its e-mail communications with National Grid were attorney work product in that the e-mails were prepared by an attorney of the Division in anticipation of preparing the Division's recommendation to the Commission regarding the merits of a then pending contested administrative proceeding, Docket No. 4981. The assertion of attorney work product has not been waived because the Division and National Grid possess the common interests to ensure that transmission upgrade and study costs are not imposed on ratepayers and/or do not produce unjust and unreasonable rates.

1-8 Explain the basis for the Division's position that its "common interest" with the Company made it right and proper for the Division to confer in response to an energy policy issue put before the Commission?

RESPONSE:

The Division objects to Data Request 1-8 on the grounds that it is geared to unduly harass the Division and that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. Without waiving the foregoing objections, the Division and National Grid possess a "common interest" to ensure that transmission upgrade and study costs that were the subject of Docket No. 4981 are not imposed on ratepayers and/or produce unjust and unreasonable rates. Where National Grid has taken a position that is consistent with ratepayer interests in keeping rates as low as possible, it is particularly "right and proper" for the Division to consult Company to be able to formulate the Division's own recommendation for submission to the Commission.

- 1-9 Explain how such a claimed "common interest" is consistent with the Division's charge to regulate the way electric utilities carry on their operations to assure an abundance of energy supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment. R.I. Gen. Laws §39-1-1(a).**

RESPONSE:

The Division objects to Data Request 1-9 on the grounds that it is geared to unduly harass the Division and that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-9 on the ground that it seeks a response based on the erroneous assumption contained in the request that the Division's sole charge is to regulate utilities to assure an abundance of energy supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment. Without waiving the foregoing objections, the Division and National Grid possess a "common interest" to ensure that transmission upgrade and study costs that are the subject of Docket No. 4981 do not produce unjust and unreasonable rates.

- 1-10 Explain how such an observed "common interest" provide for just and reasonable rates and charges without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices.**

RESPONSE:

The Division objects to Data Request 1-10 on the grounds that it is geared to unduly harass the Division and that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. Without waiving the foregoing objections, National Grid and the Division

both believe, in accordance with long-established and accepted regulatory principles that cost causers, (specifically, Petitioner, in Docket No. 4981) must be responsible for the transmission upgrade and study costs that are the subject of the docket. Failure to adhere to this principle would produce unjust and unreasonable rates, and rates that in all probability, would be discriminatory, rife with preference and advantages, and/or unfair and anticompetitive.

1-11 Explain how such a perceived “common interest” ensures the Division’s due regard for the preservation and enhancement of the environment as our general assembly deemed necessary to protect the health and general welfare of Rhode Island citizens.

RESPONSE:

The Division objects to Data Request 1-11 on the grounds that it is geared to unduly harass the Division and that it seeks information that is neither relevant to the Supreme Court’s remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-11 on the ground that it seeks a response based on the wholly erroneous assumption contained in the request that the Division’s sole charge is to regulate utilities to assure an abundance of energy supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment.

1-12 Explain how the Division could properly claim a common interest with a utility it is charged to regulate in a fair and non-discriminatory manner as to claims brought by a customer contesting the Company’s right to impose federal obligations on a renewable energy project interconnecting to Rhode Island’s distribution system under the Company’s distribution system interconnection tariff so that it could generate cheaper, cleaner and more secure renewable energy?

RESPONSE:

The Division objects to Data Request 1-12 on the grounds that it is geared to unduly harass the Division and that it seeks information that is neither relevant to the Supreme Court’s remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-12 on the ground that the request erroneously assumes the that the Division must always support the generation of “cheaper . . . renewable energy.” Without waiving the foregoing objections, both the Company and the Division possess a common interest in ensuring the application of accepted ratemaking principles to ensure that transmission upgrade and study costs are not passed on to the general body of ratepayers, particularly when the energy that is produced by Petitioner’s project is subsidized by the general body of ratepayers and exceeds the cost of more traditional forms of energy within National Grid’s portfolio. It should also be noted that the Division was acting as a party/ratepayer advocate in this matter and not in its regulatory capacity.

1-13 Did the Division consider whether the Company could have any economic interests that might influence its advocacy on the issue presented to the Commission in this docket 4981?

RESPONSE:

The Division objects to Data Request 1-13 on the ground that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-13 in that it calls for undue speculation as to the Company's motives for espousing the position that it did before the Commission in Docket No. 4981. Without waiving the foregoing objections, the Division's recommendation to the Commission in Docket No. 4981 speaks for itself, and was formed based upon its own review of the matter and the advice of an outside consultant.

1-14 What economic interests might have influenced the Company's advocacy on the issue presented to the Commission in this docket 4981?

RESPONSE:

The Division objects to Data Request 1-14 on the ground that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-14 in that it calls for undue speculation as to the Company's motives for espousing the position that it did before the Commission in Docket No. 4981.

1-15 How are the Company's interests that might influence its advocacy on the issue presented to the Commission in this docket 4981 consistent with assuring an abundance of energy supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment?

RESPONSE:

The Division objects to Data Request 1-15 on the ground that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-15 in that it calls for undue speculation as to the Company's motives for espousing the position that it did before the Commission in Docket No. 4981.

1-16 Did the Division consider whether the Episcopal Diocese of Rhode Island (EDRI) could have interests that might influence its advocacy on the issue presented to the Commission in this docket 4981?

RESPONSE:

The Division objects to Data Request 1-16 on the ground that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-16 in that it calls for undue speculation as to EDRI's motives for espousing the position that it did before the Commission in Docket No. 4981. Without waiving the foregoing objections, the Division did not agree with the position that the Diocese took in its petition so could not join with it.

1-17¹ What economic interests might have influenced EDRI's advocacy on the issue presented to the Commission in this docket 4981?

RESPONSE:

The Division objects to Data Request 1-17 on the ground that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-17 in that it calls for undue speculation as to the EDRI's motives for espousing the position that it did before the Commission in Docket No. 4981.

1-18 How are EDRI's interests that might influence its advocacy on the issue presented to the Commission in this docket 4981 consistent with assuring an abundance of energy supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment?

RESPONSE:

The Division objects to Data Request 1-18 on the ground that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-18 in that it calls for undue speculation as to the EDRI's motives for espousing the position that it did before the Commission in Docket No. 4981.

1-19 If the Division concluded that the Company's interests were better aligned with assuring an abundance of energy supplied to the people with reliability, at economical

¹ Note the last three data requests in Petitioner's First Set are erroneously numbered. They have been properly renumbered for the purposes of this response.

cost, and with due regard for the preservation and enhancement of the environment than were EDRI's

RESPONSE:

Data Request No. 1-19 is an incomplete data request; therefore, no response is required.